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# The AFL-CIO — NDLO Agreement: Five Proposals for Advancing the Partnership

by Jayesh M. Rathod\*

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On August 9, 2006, a new alliance was formed in the struggle for the rights of low-wage workers: the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the nation's largest federation of labor unions, entered into a formal partnership agreement ("the Agreement") with the National Day Laborer Organizing Network (NDLO), a coalition of organizations around the country that organize, educate, and advocate on behalf of day laborers, many of whom are immigrant workers.<sup>1</sup> Although collaborations between organized labor and day laborer advocates predate the Agreement, this partnership marks a watershed between two entities which — while both are known for their vociferous advocacy on behalf of low-wage workers — are often perceived to have competing interests, and have engaged in relatively little dialogue, particularly at the local level.<sup>2</sup>

This Agreement is an important demonstration of solidarity during a time of vigorous national debate about immigrant workers — both about their overall role in the U.S. economy and about their presence in many local communities as day laborers. The Agreement is also reflective of the growing influence of worker centers, which now number over 140, spread across 31 states.<sup>3</sup> Indeed, as the immigration debates have unfolded, worker centers have earned recognition for their aptitude in organizing and mobilizing immigrant workers, and for their visibility in the media. In this context, the AFL-CIO and NDLO have articulated several shared objectives, which will guide their collaborative efforts under the Agreement. The objectives include the following: advancing the workplace rights of day laborers and other low-income workers born in the United States and other countries; pursuing comprehensive immigration reform that supports workplace rights and includes a legalization plan with a clear path towards citizenship and political equality for workers; supporting and defending day laborer worker centers in order to establish and maintain decent labor standards and working conditions for all workers; developing educational programs about the challenges facing both day laborers and the unionized workforce on issues such as health and safety, wage and hour enforcement, and other workplace protections of importance to both communities; strengthening local collaboration between unions and worker centers; collaborating on impact litigation and the advancement of civil rights.<sup>4</sup>

These objectives set forth an ambitious agenda for collaboration. And although the vast strategic potential of this partnership is apparent to many observers, concrete collaborative initiatives are likely to evolve slowly. Two factors in particular — the immediacy and intensity of the immigration reform debate, and the need to shore up internal support for the Agreement — may delay the emergence of other efforts.

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While comprehensive immigration reform is a profoundly important issue for both day laborer centers and organized labor, both parties to the Agreement have already adopted stances,<sup>5</sup> which they are pursuing. Meanwhile, a range of other concerns continue to afflict low-wage immigrant workers and their advocates, and will likely survive the tidal wave of immigration reform. In this article, therefore, I present five specific projects that can be undertaken jointly, in furtherance of the other objectives of the Agreement. Each of these five proposals will inure to the benefit of both organized labor and day laborer centers, and will draw upon the unique experiences and strengths of the respective entities.



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Community and trade union activists gather at an immigration rally in Lumberton, NC.

## (1) DEVELOP MULTILINGUAL, CULTURALLY APPROPRIATE CURRICULA RELATED TO OCCUPATIONAL SAFETY AND HEALTH

One area where this collaboration has the most promise is in the promotion of health and safety in the workplace, and the development of related curricula targeted to the low-wage immigrant workforce. Over the last several years, there has been a marked rise in the incidence of workplace injuries and deaths suffered by foreign-born workers in the United States, many of whom are engaged in low-wage occupations.<sup>6</sup> Day laborers, in particular, are susceptible to injuries and death on the job: they often are employed by unlicensed and/or undercapitalized subcontractors who lack the resources to provide workers with suitable safety training and equipment.<sup>7</sup> Moreover, many immigrant day laborers may be reluctant to complain about safety violations, fearing that employers may retaliate against them by withholding their wages or jeopardizing their immigration status; and employers may likewise perceive immigrant workers, regardless of their precise status, to lack employment rights. Another important factor is an over-supply of laborers, in certain metropolitan centers and suburban areas. Facing formidable competition for jobs, most day laborers in

these areas would be reluctant to demand safety equipment or training, knowing that they easily could be replaced with workers who will perform the assigned duties without adequate protection.<sup>8</sup> Furthermore, given the many economic challenges facing day laborers — the need to provide for themselves, and often, for family members overseas — any actions that would dissuade an employer from hiring would typically be avoided.

To combat these deteriorating conditions, a fruitful partnership on occupational safety and health issues may be developed pursuant to the Agreement. Unions historically have been known for their promotion of and expertise on occupational safety and health issues. Indeed, many unions — particularly those in the

of day laborers are well documented,<sup>11</sup> and in most states — as on the federal level — wage and hour enforcement is severely lacking.<sup>12</sup>

Although straight non-payment of wages does occur among unionized workers, many unions, particularly those in the building trades, are concerned about violations of the Davis-Bacon Act (Act).<sup>13</sup> The Act is a federal law that requires the payment of prevailing wages and benefits to workers on all federal government construction contracts, and on most contracts for federally assisted construction over \$2,000.<sup>14</sup> The Act has come under attack in recent years, as numerous bills have been introduced to weaken or repeal the Act.<sup>15</sup>

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building and construction trades,<sup>9</sup> have developed comprehensive curricula on workplace safety and health, often as part of apprenticeship or other training programs.

As a complement to the substantive expertise held by unions, day laborer advocates are able to leverage their close relationship with the low-wage immigrant worker community and their ability to communicate in a culturally appropriate and effective manner. Many day laborer organizations, for example, have developed expertise in the use of popular education methodologies to educate immigrants about their rights in the workplace and other issues of concern to them.<sup>10</sup>

The many state occupational safety and health committees are important collaborators in this process; they have worked to draw attention to the safety issues affecting immigrant workers and initiated some educational campaigns. By working together, these entities can develop effective curricula in English and Spanish (and in other languages, as appropriate) to educate and train workers on workplace safety and health matters. These curricula may be trade- or industry-specific, or may focus on a range of tasks that are performed by workers. Ultimately, they will serve as a tremendous resource for day laborer advocates and can also be put to use by unions as their membership expands to include immigrant workers.

## **(2) ADVOCATE FOR STRONGER ENFORCEMENT OF THE DAVIS-BACON ACT**

Another subset of workplace rights that can be advanced through this partnership are existing wage laws, which desperately need stronger enforcement. Reports of wage theft by employers

The Act is critically important for the building and construction trade unions. Perhaps most importantly, it sets a respectable standard for wages for government-funded projects, comparable to wages regularly paid by union contractors; therefore, when bidding on federal construction projects that are subject to the Act, non-union contractors cannot submit low bids by undercutting local wage rates. Moreover, when choosing companies for organizing campaigns, unions have targeted employers that knowingly violate the Act. A union’s ability to bring these violations to light, contrast the wages and benefits of a union shop, and obtain back wages for workers, can form the centerpiece of an organizing campaign.

Immigrant workers, much like organized labor, have a stake in the continued vitality of the Act.<sup>16</sup> Indeed, many immigrant workers, including day laborers, are susceptible to violations of the Act. Many large-scale government construction projects are staffed by a host of subcontractors, who then recruit day laborers or other immigrant workers, and, in turn, pay them well below the prevailing wage.<sup>17</sup> Given these shared interests, unions and day laborer centers have an interest, at a minimum, in sharing information regarding problematic contractors and alleged violations of the Act.

Unfortunately, when workers’ rights advocates seek redress for these violations, they encounter compliance mechanisms that are cumbersome and ineffective. In theory, contractors are required to verify compliance with the Act by submitting “certified payrolls”<sup>18</sup> — which specify each employee’s name and contact information, job classification, hours worked, rate of pay, earnings, and deductions — on a weekly basis to the agency that issued the contract. Yet employers sometimes falsify these payroll records, make unlaw-

ful deductions, or misclassify their employees, placing them in a lower-paying job classification. Each federal agency, in turn, has an obligation to monitor these payroll submissions and ensure overall compliance with the Act.<sup>19</sup> In practice, however, enforcement is severely lacking: at many agencies, the investigation process is triggered only when workers or their advocates file a complaint. Because enforcement of the Act is agency-driven and depends almost entirely on the responsiveness of a particular agency and its compliance officers, there is tremendous inconsistency in enforcement across the different agencies. It is not uncommon, for example, for complainants to receive no response from certain agencies, while other agencies have highly structured and proactive offices dedicated to compliance with the Act.

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“Another way to bridge the divide between the two groups is to emphasize that organized labor has been involved in various struggles for social justice, and that their leadership in the immigrants’ rights movement is a natural continuation of that legacy.”

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The Davis-Bacon compliance and enforcement schemes have come under attack from all sides. Any reforms to strengthen the law must include a few key components. First, there must be consistent and effective monitoring of payrolls submitted by contractors. Although a thorough review of every payroll submission may not be feasible, a consistent policy of spot-checking, coupled with more detailed inquiries for past violators, must be implemented. Second, agencies must affirmatively investigate possible violations of the Act as suggested by incomplete or suspect payroll submissions, along with complaints received from individuals and groups of workers. To be effective, investigations must include site visits and on-site interviews of workers; this, in turn will require the recruitment and training of bilingual, culturally competent personnel who are able to communicate with immigrant workers and earn their trust. Finally, education is an important aspect of any effort to strengthen the Act: contractors and workers must be informed about their obligations and rights, respectively, under the law. For contractors in particular, technical assistance on compliance may be necessary.

These proposals can be implemented in a variety of ways. Given the challenges of the federal rulemaking process, the U.S. Department of Labor may choose to issue a Policy Letter, clarifying

and expanding upon existing regulations related to the Act. Similarly, the Department of Labor may circulate agency “best practices” as to how monitoring and enforcement can be handled in an efficient and cost-effective manner. This option might be coupled with periodic oversight hearings and/or evaluations by the Government Accountability Office. Upon identifying the agencies where enforcement is consistently problematic, advocates might also pursue a legislative strategy, drafting a letter to legislators who oversee appropriations to those agencies and asking them to contact the offending agencies directly. A more ambitious option would be to centralize the Davis-Bacon complaint process in the Department of Labor, although this would require extensive cooperation and information-sharing among agencies. All of these options will be furthered by the advocacy of both day laborer advocates and organized labor, who can jointly demonstrate that protecting and enhancing the Act is not simply a “union” issue, but one that affects a broad spectrum of workers.

### (3) DEVELOP AND IMPLEMENT EDUCATIONAL CAMPAIGNS ABOUT THE IMPORTANCE OF DAY LABORER CENTERS AND LABOR UNIONS AS ADVOCATES FOR LOW-WAGE AND IMMIGRANT WORKERS

One of the most formidable obstacles to the successful implementation of this Agreement is a lack of awareness about the importance and internal functioning of both day laborer centers and labor unions. Certainly, some union members perceive day laborers and their advocates as posing a threat to unions, and believe that immigrant workers undercut unions by flocking to non-union employers and agreeing to work for unacceptably low wages. This perception appears to be strongest among the building and construction trade unions, where union contractors must bid head-to-head against non-union employers who pay their employees (often immigrant workers) much lower wages. Given this backdrop, day laborer centers are sometimes perceived as protectors of a labor force that directly undermines unions.

Moreover, many union members have a fundamental misunderstanding about who participates in day laborer centers and how they operate. Members of the general public may also share in these misperceptions. For example, many perceive day laborer centers to be comprised entirely of undocumented workers. In reality, however, the day laborer population in most cities includes individuals with a range of immigration statuses, from U.S. citizens to individuals with temporary lawful status and work authorization to undocumented workers. The types of services that day laborer centers provide are also often misunderstood. Although day laborer centers are often equated with hiring centers, most day laborer centers, including NDLO members, engage in a range of activities, including organizing, leadership development, English instruction, and the provision of social, legal, and other direct services.

Stereotypes and misperceptions about unions are likewise held by day laborers. Many day laborers hail from countries where unions and union memberships are highly politicized; indeed, in some Latin American countries active union membership may pose a threat to one’s individual safety and security.<sup>20</sup> Moreover, day laborers often have an incomplete or incorrect understanding of how unions operate. These misperceptions are fueled by employer-driven anti-union campaigns, and relate to various topics, including the amount and frequency of dues payments, the purpose of union dues, and the likelihood (especially in the context of building and construction trade unions) that workers will



be required to wait “on the bench” in the hiring hall in between projects, thereby forgoing a steady income stream. Additionally, day laborers often are unaware of the full range of benefits and services available to some union members, including health insurance, annuity and retirement plans, and other perquisites.

Clearly, these misperceptions and stereotypes must be addressed in order for this partnership to be successful. As an initial step, educational campaigns, targeted to union members and day laborers, respectively, can help in this effort. In crafting educational campaigns, it is important to frame unions and day laborer centers as parallel entities using similar strategies to protect the rights of vulnerable workers in the United States. Both entities have embraced organizing, training, and leadership development, and seek to improve the quality of life and overall well-being of their constituencies. Another way to bridge the divide between the two groups is to emphasize that organized labor has been involved in various struggles for social justice, and that their leadership in the immigrants’ rights movement is a natural continuation of that legacy.<sup>21</sup> The history of participation by immigrants in the U.S. labor movement is a related component that can be integrated into an education campaign.

To be most effective, these educational campaigns must be conducted in both English and Spanish. Moreover, the themes described above may be presented in a variety of ways: in fact sheets, flyers, popular education materials, and videos; at spoken presentations (at membership meetings or conferences); on websites, and more.

#### **(4) ESTABLISH FORMAL PARTNERSHIPS AT THE LOCAL LEVEL BETWEEN DAY LABORER CENTERS AND UNIONS FOR THE EXCHANGE OF RESOURCES, SKILLS, AND SERVICES**

Strong, formalized partnerships at the local level between day laborer centers and unions are essential to realizing the objectives in the Agreement. In fact, similar partnerships between immigrant worker advocates and organized labor already have been undertaken in different parts of the country: in the Los Angeles area the Korean Immigrant Worker Alliance (KIWA) has cultivated relationships with unions to fight for a living wage for grocery workers and a prevailing wage for construction workers in the Koreatown neighborhood.<sup>22</sup> In the Washington, D.C. metropolitan area the Ironworkers International Union and CASA of Maryland, a non-profit organization that works closely with immigrant workers, have sought to bridge the divide between unions and worker centers by partnering in organizing efforts among Latino immigrant workers, and making worker center services available to union members.

These examples illustrate the diverse forms that partnerships can take. In devising future collaborations, and to fully appreciate their value, it is helpful to think of the partnerships as an exchange of resources, skills, and/or services. For example, day laborer centers can provide added value to the work of local unions in multiple ways. Perhaps most notably, day laborer centers typically have experience organizing within the Latino and broader immigrant community and have a strong sense of the immediate needs and priorities of community members. Indeed, day laborer centers have been widely recognized for their success in organizing, at a time when many labor unions are struggling with organizing efforts.<sup>23</sup> Although many unions have begun to develop the “cultural competence” needed to successfully organize immigrant

workers, others are still struggling and would greatly benefit from a partnership with day laborer centers. This type of skills sharing can take many forms: staff or other representatives of day laborer centers might accompany union organizers to job sites, on house calls, or in other settings. Or, the day laborer center might provide a more welcome setting for the union to conduct meetings with, or outreach to, prospective members. Some unions and union organizers struggle with basic communication with prospective members given a lack of bilingual personnel. For that reason, day laborer centers may be able to provide important interpretation and translation assistance to unions.



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Immigrants Rights March, Washington, D.C., 2006.

Apart from these resources and skills that day laborer centers might bring to bear to support the work of union efforts, there are a range of services that day laborer centers — particularly those that are more established — might offer to union members or prospective union members. Some centers offer a range of social services tailored to the needs of recent immigrants, including assistance in accessing government services and benefits. Some centers also provide legal services or courses in English for speakers of other languages. Many union members, particularly those who are immigrants, may need access to these services; by providing that access, the unions can strengthen the trust between immigrant workers and unions, and will demonstrate that unions are responsive to the needs and life experiences of the immigrant workforce.

Similarly, unions can support the work of day laborer centers in numerous ways. Unions often have established relationships with lawmakers at the local and state levels, which may prove helpful when worker centers seek to effect a change in policy or law. Indeed, in announcing the Agreement, John Sweeney, President of the AFL-CIO, explicitly acknowledged that “[w]orker centers will benefit from the labor movement’s extensive involvement and experience in policy and legislative initiatives on the local, state, and national levels.”<sup>24</sup> This policy expertise and influence may also prove invaluable when day laborer centers are put on the defensive — for example, when there is local opposition to a center.<sup>25</sup>

Day laborer centers can benefit from a range of other resources and skills that unions have to offer. Unions can be important allies in efforts that require mobilizing people, whether the efforts are linked to policy initiatives or are independent campaigns. A day laborer center, for example, may organize a campaign targeting unscrupulous local employers who fail to pay wages and otherwise mistreat workers; unions easily could link their members

into these efforts, resulting in greater support for the cause, increased turnout at events, and heightened pressure on the target employer. Relatedly, some unions have well-developed press offices that can provide technical assistance to day laborer centers that seek to draw public attention to an individual case or broader cause. Training and leadership development opportunities that are available to union staff and members might also be made accessible to the staff or leadership of day laborer centers.

Clearly, these local partnership agreements will be shaped by the needs of the particular local union and day laborer center that choose to collaborate. Nevertheless, it is probable that an agreement can be structured to satisfy both entities. This type of “exchange” partnership at the local level is essential to develop trust between organized labor and day laborer centers and to lay the foundation for more concrete, truly collaborative efforts in the future.

### (5) CREATE PATHWAYS FOR IMMIGRANT WORKERS, PARTICULARLY DAY LABORERS, TO ENROLL IN UNION APPRENTICESHIP AND TRAINING PROGRAMS

One strategy to strengthen the relationship between day laborer centers and unions, and to directly combat the perception that immigrants are undercutting union members, is to create pathways for day laborers and other immigrant workers to enter union apprenticeship and training programs. Indeed, the vast majority of day laborers are seeking permanent employment opportunities, through which they can establish a career in the United States.<sup>26</sup> Union apprenticeship programs provide that kind of opportunity. Many immigrant day laborers bring with them employment experience from their home countries, making them natural candidates for certain apprenticeship programs.

In practice, this process can occur by allowing local unions to conduct outreach among local day laborers, and acquiring a sense of the skill set and vocational goals of the workers. At first, only one or two appropriate workers may be identified. But as workers settle in the programs and trust in the union grows, a more formalized approach may be adopted.<sup>27</sup> This partnership also benefits day laborer centers, as it demonstrates a desire to ensure the professional development and economic advancement of day laborers, thereby enhancing their credibility with community members. Relatedly, it forces day laborer centers, which may be oriented to facilitating temporary employment, to think more strategically

about creating permanent employment opportunities for the workers who frequent their centers.

The successful implementation of this proposal, of course, requires a substantial resource commitment from unions and a willingness to modify apprenticeship programs so that they are welcoming to immigrant day laborers. This may require, for example, that the apprenticeship and training curricula be translated into Spanish and possibly other languages, and that bilingual instruction be offered. Unions may assist their members in improving their English skills, so that they may effectively communicate with co-workers who speak only English. (As noted above, this may be accomplished through a partnership with a day laborer center.) The burden also falls on the union leadership to develop a basic ability to communicate with an increasingly diverse membership. And perhaps most fundamentally, it requires an acceptance on the part of unions and their leadership that immigrant workers are part of the future of their unions, and they must be embraced in order to ensure the longevity of organized labor.

### CONCLUSION

While immigrant workers in the United States face formidable challenges, their plight is not unique. Across the globe, as the population of migrant workers rises, many countries are grappling with a range of issues, including how best to integrate immigrant workers into their societies and how to protect these workers from exploitative conditions. As these conversations continue, the need for cooperation between workers’ rights advocates is paramount.

The Agreement between the AFL-CIO and NDLON is an example of precisely the type of collaboration that is needed in the United States and elsewhere. As an initial step, advocates who represent interconnected — and in some instances, competing — segments of the workforce must learn about each other, develop trust, and articulate a set of shared objectives. The AFL-CIO and NDLON are to be praised for beginning this process. The true measure of success of the partnership, however, will be the realization, through joint efforts, of measurable improvements in the lives of low-wage immigrant workers, and the strengthening of institutions that advocate on their behalf. Towards that end, the five proposals outlined above offer guidance for converting the laudable objectives of the Agreement into concrete, meaningful opportunities for collaboration. *HRB*

### ENDNOTES: The AFL-CIO — NDLON Agreement

1 Press Release, AFL-CIO, “AFL-CIO and NDLON, Largest Organization of Worker Centers, Enter Watershed Agreement to Improve Conditions for Working Families,” Aug. 9, 2006 (on file with author).

2 Although there has been some communication between day laborer organizations and local unions, sustained relationships are relatively rare. See Janice Fine, *Worker Centers: Organizing Communities at the Edge of the Dream* 14-18 (2006) (noting that only 14 percent of worker center surveyed had grown out of unions or union organizing drives).

3 See Janice Fine, *Point of View: Finding a Place for Immigrant Workers in Today’s Labor Movement*, [http://www.aflcio.org/mediacenter/speakout/janice\\_fine.cfm](http://www.aflcio.org/mediacenter/speakout/janice_fine.cfm) (accessed Apr. 15, 2007); Press Release, *supra* note 1.

4 Mike Hall, *AFL-CIO Partners with National Day Laborer Organizing Network*, AFL-CIO Weblog (Aug. 9, 2006), <http://blog.aflcio.org/2006/08/09/afl-cio-partners-with-national-day-laborer-organizing-network>.

5 See NDLON, *Declaration from the Day Laborer Community Regarding Legalization*, <http://www.ndlon.org/docs/legalizaEN.htm>; AFL-CIO (accessed Apr. 15, 2007), AFL-CIO, *AFL-CIO Policy on Immigration*, <http://www.aflcio.org/issues/civilrights/immigration/upload/AFLCIOPO.pdf> (accessed Apr. 15, 2007).

6 See AFL-CIO, *Death of the Job: The Toll of Neglect*, [http://www.aflcio.org/issues/safety/memorial/upload/doj\\_2006.pdf](http://www.aflcio.org/issues/safety/memorial/upload/doj_2006.pdf) (2006); Bureau of Labor Statistics, *Census of Fatal Occupational Injuries Summary, 2005*, <http://www.bls.gov/news.release/cfoi.nr0.htm> (Aug. 10, 2006).

7 See Abel Valenzuela, Jr., et al., *On the Corner: Day Labor in the United States*, Jan. 23, 2006, at 12, available at [http://www.sscnet.ucla.edu/issr/csulp/uploaded\\_files/Natl\\_DayLabor-On\\_the\\_Corner1.pdf](http://www.sscnet.ucla.edu/issr/csulp/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf) (reporting that one in five day laborers has suffered an injury while on the job) (hereinafter *On the Corner*).

8 Although many day laborer centers have been successful in organizing workers to demand respectable hourly wages and other workplace standards, the influx of new workers into the day labor pool poses challenges for organizers and continues to fuel a collective action problem.

9 The Building and Construction Trades Department of the AFL-CIO coordinates and supports the work of international unions focused on the construction industry. Similar networks of building and construction trade unions exist at the state and regional levels.

10 See generally Janice Fine, *Worker Centers: Organizing Communities at the Edge of the Dream*, 50 N.Y.L. Sch. L. Rev. 417, 446 (2005) (describing the use of popular education methodologies at worker centers). The Institute of Popular Education of Southern California (IDEPSCA), <http://www.idepsca.org>, is one organization that has made popular education a central component of its work with day laborers.

11 See *On the Corner*, *supra* note 7, at 14.

12 See, e.g., National Employment Law Project, *Holding the Wage Floor: Enforcement of Wage and Hour Standards for Low-Wage Workers in an Era of Government Inaction and Employer Unaccountability*, at 8-9. See generally Brennan Center for Justice, *Protecting New York's Workers: How the State Department of Labor Can Improve Wage-and-Hour Enforcement*, [http://brennancenter.org/dynamic/subpages/download\\_file\\_47027](http://brennancenter.org/dynamic/subpages/download_file_47027) (Dec. 2006) (detailing the failings of the New York State wage and hour enforcement scheme and proposing reforms); CASA of Maryland, *Wage Theft: How Maryland Fails to Protect the Rights of Workers*, <http://www.casademaryland.org/press/wagetheft.pdf> (Jan. 2007) (highlighting the epidemic of wage theft in the State of Maryland).

13 40 U.S.C. §§ 3141 *et seq.* (2006).

14 40 U.S.C. § 3141 (2006). Many states have their own prevailing wage laws, which are collectively referred to as the "little Davis-Bacon" laws.

15 See, e.g., S. 141, 104th Cong. (1995); H.R. 736, 106th Cong. (1999); H.R. 331, 107th Cong. (2001); H.R. 4643, 109th Cong. (2006).

16 Although immigrant workers are affected by violations of the Davis-Bacon Act, the Act has faced criticism for decades as being harmful to minority workers, particularly African-Americans. Indeed, many commentators have noted that the Act was conceived during an era when many unions excluded African-Americans, and was designed to insulate unions and union workers from competition by African-Americans who were willing to work for lower wages. See David E. Bernstein, *Roots of the Underclass: The Decline of Laissez-Faire Jurisprudence and the Rise of Racist Labor Legislation*, 43 Am. U. L. Rev. 85, 113-119 (1993). To this day, there are ongoing debates about whether the Act continues to disadvantage minority workers. Opinions are mixed. See Bennett S. Miller, *No Such Thing as a Free Lunch: Hurricane Katrina and the Davis-Bacon Act*, 16 S. Cal. Rev. L. & Soc. Just. 197, 228 (2006) (arguing that the Act may not have the same discriminatory effect as in years past, and that the law may actually help minority workers in certain parts of the country). See generally Robert A. Levy, *An Equal Protection Analysis of the Davis-Bacon Act*, 1995 Det. C. L. Mich. St. U. L. Rev. 973 (1995) (concluding that the Davis-Bacon Act violates the Equal Protection clause of the U.S. Constitution). It is undeniable that in the past, some unions have engaged in racist and discriminatory practices, and many unions continue to struggle to make themselves more welcoming to minority workers. Nevertheless, the Agreement between the AFL-CIO and NDLO is demonstrative of many unions' desire to reach out to immigrant and minority workers.

17 The deplorable treatment of day laborers and other immigrant workers who participated in the post-Hurricane Katrina cleanup is illustrative of the relevance of the Davis-Bacon Act to the immigrant workforce. As was widely reported, in the aftermath of Hurricane Katrina, President Bush suspended the applicability of the Davis-Bacon Act in the Gulf region. Proclamation No. 7924 by the President, *To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina*, <http://www.whitehouse.gov/news/releases/2005/09/20050908-5.html> (Sept. 8, 2005). Facing intense opposition, President Bush rescinded the Executive Order several weeks later. See Proclamation No. 7959 by the President, *Revoking Proclamation 7924*, [http://www.usda.gov/procurement/policy/advisories\\_x/proclamation\\_7959.pdf](http://www.usda.gov/procurement/policy/advisories_x/proclamation_7959.pdf) (Nov. 3, 2005). Hundreds of immigrant workers were involved in the post-Hurricane Katrina cleanup, on both Davis-Bacon and non-Davis-Bacon projects. Many of these workers were underpaid or received no wages and have litigated their claims in the courts. See, e.g., Nancy Trejos, "Md. Laborers' Suit Says Contractor Owes Pay for Katrina Work," *Washington Post*, Dec. 21, 2005; Southern Poverty Law Center, *Center Seeks Justice for Katrina's Migrant Workers* (on file with author) (Feb. 2, 2006).

18 29 CFR § 5.5(a)(3)(ii). An example of a certified payroll form is available on the U.S. Department of Labor website, <http://www.dol.gov/esa/forms/whd/wh347.pdf>.

19 29 CFR § 5.6.

20 See, e.g., U.S. Department of State, *Country Report on Human Rights Practices 2006: Colombia* (describing the killings, harassment, and detention of trade unionists in Colombia).

21 Unions certainly provided support in the civil rights movement of the 1950s and 1960s and have participated in the ongoing struggles for equality for women. Unsurprisingly, however, their involvement in these efforts have exposed internal tensions in the labor movement. See generally Alan Draper, *Conflict of Interests: Organized Labor and the Civil Rights Movement in the South, 1954-1968* (1994); Brigid O'Farrell, et al., *Rocking the Boat: Union Women's Voices, 1915-1975* (1996).

22 Tiffany Ten Eyck, "Worker Centers Increasingly Are Forging Alliances With Unions," *Monthly Review*, Jan. 5, 2007.

23 See Fine, *supra* note 11, at 452-54 (describing some of the organizing successes of worker centers).

24 Press Release, *supra* note 1.

25 Debates have erupted around the country regarding immigrant day laborers and the creation of centers to organize and assist them. See, e.g., Bill Turque and Nikita Stewart, "Labor Site Backlash Felt at Polls in Herndon: Three Who Supported Immigrant Center Ousted," *Washington Post*, May 3, 2006 (describing the ongoing controversy in the town of Herndon, Virginia regarding the establishment of a day laborer center).

26 *On the Corner*, *supra* note 7, at 20 (reporting that 86 percent of day laborers are seeking regular, permanent employment).

27 One specific complaint that day laborer centers have leveled against unions is their lack of responsiveness when the day laborer center staff have contacted them about specific workers (in a range of industries) who have grievances with their employer and need the assistance of a union organizer. This proposal helps alleviate that concern by creating a formal mechanism for referrals. It also reveals to day laborer centers the relative complexity of union recruitment and membership processes; conversely, it may also reveal to unions the need to simplify their membership structures and be more flexible in their approaches to organizing.